IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-09-2005

CORAM :

THE HONOURABLE MR. MARKANDEY KATJU, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 44153, 44157, 44158, 44178 of 2002
and
W.P. No. 3700 of 2003
and
W.P.M.P. No. 64732, 64735, 64737 & 64761 of 2002

N.S. Rajan .. Petitioner in WP 44153/02

R. Meenakshi .. Petitioner in WP 44157/02

L. Ramanathan .. Petitioner in WP 44158/02

G. Ramachandran .. Petitioner in WP 44178/02

K. Balasubramanian .. Petitioner in WP 3700/03

Versus

1. The Management of Indian Bank
   rep. by its Chairman and
   Managing Director
   Indian Bank, Central Office
   Rajaji Salai
   Chennai - 600 001

2. The Assistant General Manager
   Personnel Department
   Indian Bank, Central Office
   Rajaji Salai
   Chennai - 600 001 .. Respondents in all W.P.S

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Certiorari and for a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. M. Ramamoorthi in all the Writ Petitions

For Respondents : Mr. Vijayan, Senior Counsel for M/s. King & Patridge in all the Writ Petitions

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COMMON ORDER

The prayer in WP No. 44153 of 2002 is for a Writ of Certiorari calling for the records of the second respondent in connection with the impugned order passed by the second respondent dated 07-07-2001 in Ref: PENSION/98/7073 in so far as he has deducted the qualifying period of service of the petitioner from 27 years and 215 days to 26 years and the order dated 11-10-2002 and quash the same and consequently direct the respondents to calculate the pension and commutation accordingly and pay to the petitioner with arrears together with interest at 12% p.a. for delayed payment.

2. W.P. No. 44157 of 2002 has been filed praying for a Writ of Certiorari calling for the records of the second respondent in connection with the impugned order passed by the second respondent dated 23-04-2001 in Ref: PENSION/98/15331 in so far as he has deducted the qualifying period of service of the petitioner from 23 years and 6 days to 22 years and the order dated 11-10-2002 and quash the same and consequently direct the respondents to calculate the pension and commutation accordingly and pay to the petitioner with arrears together with interest at 12% p.a. for delayed payment.

3. W.P. No. 44158 of 2002 has been filed praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent in connection with the impugned order passed by the second respondent dated 09-06-2001 in Ref:PENSION/98/2996 in so far as he has deducted the qualifying period of service of the petitioner from 31 years and 25 days to 28 years and the order dated 11-10-2002 and quash the same and consequently direct the respondents to calculate the pension and commutation accordingly and pay to the petitioner with arrears together with interest at 12% p.a. for delayed payment.

4. W.P. No. 44178 of 2002 has been filed praying for a Writ of Certiorari calling for the records of the second respondent in connection with the impugned order passed by the second respondent dated 03-07-2001 in Ref: PENSION/98/ 2493 in so far as he has deducted the qualifying period of service of the petitioner from 33 years and 18 days to 31 years and the order dated 11-10-2002 and quash the same and consequently direct the respondents to calculate the pension and commutation accordingly and pay to the petitioner with arrears together with interest at 12% p.a. for delayed payment.

5. W.P. No. 3700 of 2003 has been filed praying for a Writ of Certiorari calling for the records of the second respondent in connection with the impugned order passed by the second respondent dated 03-08-2001 in Ref: No. PENSION/ 98/50157 in so far as he has deducted the qualifying period of service of the petitioner from 31 years 4 months and 18 days to 28 years and quash the same and consequently direct the respondents to calculate the pension and commutation accordingly and pay to the petitioner with arrears together with interest at 12% p.a. for delayed payment.

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6. The petitioners were employees of the respondents/Bank. The Indian Bank (Employees') Pension Regulations, 1995, hereinafter called 'Pension Regulations' came into force in the year 1995. Prior to the introduction of the pension regulations scheme, the employees were under Contributory Provident Fund Scheme. It is stated that as soon as the pension scheme was introduced, the employees were given option to remain either in the Contributory Provident Fund Scheme or to opt for Pension Regulations Scheme, if an employee opted for Pension Scheme, the accumulated employer's contribution was transferred to the pension fund and the Petitioners herein opted for pension scheme.

7. It is further stated that the respondents/bank has introduced on 09-11-2000 the Indian Bank Employees Voluntary Retirement Scheme 2000, which is a special adhoc scheme for voluntary retirement introduced by the Bank with an object of sizing man power and optimum utilisation of available sources as approved by the Government and the Board. The scheme stipulated that all permanent employees/officers with a minimum of fifteen years of completed service or 40 years of age as on 26-12-2000 were eligible to apply and the petitioners have opted for VRS and retired on 28-02-2001, 31-12-2000, 31-12-2000, 31-12-2000 and 10-03-2001 respectively.

8. It is stated that the petitioners herein have put in total number of service in the respondent bank as mentioned below:-

The petitioner in WP No. 44153 of 2002 27 years and 215 days of service; the petitioner in WP No.44157 of 2002 23 years and 6 days; the petitioner in WP No. 44158 of 2002 31 years and 25 days; the petitioner in WP No. 44178 of 2002 33 years and 18 days and the petitioner in WP No. 3700 of 2003 31 years, 4 months and 18 days of service. The second respondent herein after voluntary retirement of the petitioners for the first time has calculated the qualifying period of the petitioners and informed the eligible qualifying service as 26 years, 22 years, 28 years, 31 years and 28 years respectively by excluding the period of leave on loss of pay namely 399, 188, 1013, 82 + 692 (period of suspension) and 1316 days respectively relying on the Pension Regulations.

9. On receipt of the said intimation, except the petitioner in WP No. 3700 of 2003, the other petitioners have submitted their representation to the respondents through their association seeking to include the period of leave on loss of pay, which were rejected, with the result, they have filed Writ Petitions before this Court seeking for a Writ of Certiorarified Mandamus to quash the deduction and direct the respondents to include the leave on loss of pay, however this Court by order dated 02-08-2002 and 05-08-2002 directed the first respondent herein to consider the said representation of the petitioners on merits and in accordance with law within a stipulated period. Thereafter, the respondents herein have passed impugned orders refusing to include the said period of leave on loss of pay, hence, the present writ petitions are filed challenging the intimation of deduction as well as refusal to include the period of

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leave on loss of pay for calculating the pensionary benefits.

10. The learned counsel Mr. M. Ramamoorthi appearing for the petitioners submits that the petitioners have availed leave on loss of pay under Regulation 37 of Indian Bank (Officers') Service Regulations, (hereinafter referred to Service Regulations), wherein no provision to deduct the leave period without pay from the total service period of the petitioners; that the petitioners were not given any notice regarding the deduction; that the Pension Regulations came into force only in the year 1995 and the Regulations 17 and 18 cannot be made to apply retrospectively; that the sanctioning authority had no occasion to pass an order either way as per Regulation 17 of the Pension regulations during the relevant period and the authority, who passed the impugned orders was not the sanctioning authority, who sanctioned the extraordinary leave; that the period spent on extraordinary leave cannot be treated as a broken period of service as stated under Regulation 18 of Pension Regulations; admittedly the petitioners were very much in service of the bank during the period of leave on loss of pay; that the petitioners have not received salary during the said period, with the result, their increment and promotions were postponed, hence, deducting the said period of leave on loss of pay from qualifying service would amount to double jeopardy and prayed for setting aside the impugned orders.

11. The learned Senior counsel Mr. Vijayan appearing for the respondents/Bank submits that Regulations 17 and 18 are the relevant provisions for deciding the disputes involved in these writ petitions, as per Regulation 17 extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority direct that such leave not exceeding 12 months during the entire service to count as service for all purpose including pension; that in accordance with Regulation 18 of Pension Regulations, the broken period of service of less than six months was not considered for the purpose of qualifying service; that in compliance of the order passed by this Court in earlier writ petitions, the second respondent has given personal hearing to the petitioners, considered their request and rightly rejected their claim as it is violative of the pension regulations; that it is also true that leave on loss of pay can lead to other consequences such as postponement of increment and promotion and also reduce the qualifying service for the purpose of pension; that the petitioners have consciously availed such leave on loss of pay, hence, they are estopped from making any such allegation that it punish them twice etc., and so long as regulation 17 is in force, the Bank has to calculate pension only in accordance of the said regulation and prayed for dismissal of the writ petitions.

12. Now let us look into the relevant Regulations, which are necessary for disposal of these writ petitions:-

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i) Rule 37 of Chapter VII of the Indian Bank (Officers') Service Regulations:-

Extraordinary Leave:- An officer shall be eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service. Such leave may not be availed of except for sufficient reasons on more than 90 days at a time.

Provided that in very special circumstances, the Board may grant extraordinary leave on loss of pay to an officer upto a total period of 720 days.

(a) An officer may be granted special Casual leave and any Special Leave as may be decided by the Board in accordance with the guidelines of the Government.

ii) Indian Bank (Employees') Pension Regulations, 1995:-

2 (u) "Pensioners" means an employee eligible for pension under these Regulations.

2 (w) "Qualifying service" means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these Regulations.

14. Qualifying Service :- Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

15. Commencement of qualifying service:- Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.

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17) Counting of period spent on leave:- All leave during service in the bank for which leave salary is payable shall count as qualifying service.

Provided that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

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18) Broken period of service of less than

one year:- If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.

The explanatory Memorandum of the proceedings of the respondent dated 09-06-2002 and para 2 of the said Memorandum is to the following effect:-

"2. It is, therefore, necessary that the amendment may be made effective from 1st September, 2000 so that all employees who are members of the Pension Fund and have taken voluntary retirement under the scheme after completion of 15 years of service can draw the benefit of pension.

9. Regulation 9 came to be amended by the proceedings of the respondent bank dated 08-06-2002 and the amended Regulation 28 falling under Chapter V reads as under:

"28. Superannuation Pension:

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.

Provided that, with effect from 1st day of September, 2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any scheme that may be framed for such purpose by the Board with the approval of the Government."

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13. Factual matrix has little relevance to the issues raised and canvassed at the hearing. The petitioners have availed leave on loss of pay under Regulation 37 of Service Regulations which was made by the Board of Directors of Indian Bank in exercise of powers conferred by Section 19 read with sub-section (2) of Section 12 of Banking Companies (acquisition and transfer of undertakings) Act, 1970 in consultation with the Reserve Bank of India and Central Government which shall apply to all officers of the Bank and to such employees of the Bank to whom they may be made applicable by the competent authority to the extent and subject to such condition as such authority may decide.

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14. The petitioners herein have availed leave on loss of pay under Regulation 37 of Chapter VII of the Service Regulations. It is to be remembered that under the said Regulation 37, the officer of the bank eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service and in special circumstance the Board may grant total period of 720 days.

15. The Pension Regulations came into force only in the year 1995. An argument was advanced on the side of the petitioners that Regulations 17 and 18 cannot be made to apply retrospectively and the leave sanctioning authority had no occasion to pass an order as to whether the said period to be counted as qualifying service or not in anticipation to satisfy the requirement of Pension Regulations, which came into force later. Admittedly, the extraordinary leave on loss of pay was granted by the authority/Board. It is not out of context to refer the Service Regulation 40 which says that an officer, who has been sanctioned leave and leaves his place of duty shall furnish to the bank the address at which he can be contacted while out of station and Regulation 39 empowers the bank to recall the officer on leave by the competent authority whenever the bank deems fit to to so. Joint reading of the said regulations empower the bank when the exigencies it recall the officer before the expiry of the leave period, hence such leave no question of his actually ceasing to work or giving up the discharge of duty arises.

16. The contention of the petitioners is that Pension Regulations came into force in the year 1995, but Service Regulations were introduced in 1979, hence, Regulations 17 and 18 of Pension Regulations cannot be made to apply retrospectively. The said argument is untenable. Originally, the petitioners were under contributory provident fund scheme, as soon as Pension Regulations Scheme was introduced in the year 1995, they switched over to the same, thereby subjected them to the conditions of the same, however, their service conditions are governed only by Service Regulations. The issue involved in this case is as to whether the petitioners are entitled to get include the period of leave availed by them on loss of pay for pensionary benefits or not. Regulation 17 of Pension Regulations restrict extraordinary leave on loss of pay to 12 months during the entire period of service of an employee and such leave shall not count as qualifying service except the sanctioning authority declares it so. Regulation 37 of Service Regulations says that an officer shall be eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service, provided that in very special circumstances, the Board may grant extraordinary leave on loss of pay to an officer upto a total period of 720 days. It is evident that Service Regulations do not confine to 360 days but extend it to 720 days. To make the extraordinary leave on loss of pay as qualifying service, declaration of the authority is contemplated in Pension Regulations. Both the Regulations are to determine the question of specific order of authority for granting leave as well as count it as qualifying service as pre-requisite. Indeed this is the field of operation of both the Regulations, hence, both the provisions to co-exist. The

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Honourable Supreme Court held that when two provisions occupying the same field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity, reported in (Director General, Counsil of Scientific and Industrial Research vs. Dr. K. Narayanaswami and others) AIR 1995 Supreme Court 2318, Paragraphs 8 and 9, which runs as follows:-

> "8. If the aforesaid rule were to determine the question of condonation, specific order of the appointing authority was a prerequisite. Admittedly, there is no such order. Secondly, even if the substituted rule were to apply because of the superannuation of the respondent in 1992, by which date substituted rule had come into force, we are of the view that rule cannot override what has been mentioned in the aforesaid proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. It is a settled rule of interpretation that where two provisions operate on one field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, as is the contention on behalf of the appellant, we are of the view that both the aforesaid provisions can co-exist, and harmoniously. Rule 13 being on the subject of commencement of qualifying service, the same has first to commence, which, in case the incumbent be in temporary service first would not if there be interruption between temporary service and substantive appointment, because of what has been mentioned in the first proviso. Where the qualifying service has commenced, Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific indication to the contrary in the service-book. This is the field of operation of these two rules, according to us, the same would permit, in such a case, both the provisions to co-exist.
>
> 9. For the aforesaid reasons, we hold that there being interruption in the present case between the temporary service of the respondent as Pool Officer and the subsequent substantive appointment, the period of temporary service cannot be counted as qualifying service for the purpose of pensionary benefits. The appeal is, therefore, allowed by setting aside the impugned judgment. We, however, make no order as to costs."

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17. We have to see as to whether the authority passed any specific order ratifying the period of leave on loss of pay or not. If no specific order qualifying the said period is not passed how to treat such period at this stage.

18. Extraordinary leave on loss of pay is treated as non-qualifying period and, therefore, a definite entry is to be made in the service records to that effect. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event, but in this case it is not done. Specific entries in the service records regarding non-qualifying periods will be taken note of and such periods excluded from the service. All spells of extraordinary leave not covered by such entries will be deemed to be qualifying service, however subject to the maximum period stipulated in Regulation 37 of Service Regulations, so that the object of Pension Regulations be achieved.

19. It will be rather useful to refer Central Civil Services Pension Rules. Rule 21, Counting of period spent on leave runs as follows:-

> "21. Counting of period spent on leave:- All leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service:
>
> Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate, the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant-
>
> (i) Omitted
>
> (ii) due to his inability to join or rejoin duty on account of civil commotion or;
>
> (iii) for prosecuting higher scientific and technical studies."

20. In this context, it is also useful to refer to the decision of the Hon'ble Supreme Court reported in (Regional Provident Funds Commissioner. v. Shibu Metal Works) AIR 1965 SC 1076 wherein in Para-13, it was held thus:-

> "13. .....The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of

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> the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

21. In these cases, no definite entries are made in the service records of the petitioners to the effect the leave on loss of pay is treated as unqualifying period. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event, specific entries in the service records regarding non-qualifying periods will be only taken note of and such periods be excluded. All spells of extraordinary leave not covered by such entries simultaneously with the event will be deemed to be qualifying service. The respondents passed the impugned orders only after retirement of the petitioners, which are untenable and liable to be quashed and accordingly quashed. Hence, we hold that the leave on loss of pay of the petitioners shall count as qualifying period for pension, however, such period shall not exceed the maximum period of 720 days stipulated under Regulation 37 of Service Regulations. While calculating, the period more than six months but less than one year, can be treated as one year. Followed the decision of the Division Bench in Venkataramani vs. Indian Bank & another in WP No. 14744 of 2003 dated 04-07-2005.

22. The petitioner in W.P. No. 44178 of 2002 was placed under suspension for 692 days during his service, which period was also excluded. It is well settled that the period under suspension pending enquiry into conduct shall count as qualifying service where on conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count as qualifying service unless the authority competent to pass orders under the service Regulations governing such cases expressly declares at that time that it shall count to such extent as the competent authority may declare. It is also worthwhile to mention that similar provision is found in Regulation 21 of Pension Regulations. The settled Law can be made applicable in respect of the period of suspension of the petitioner in WP No. 44178 of 2002.

23. For the reasons mentioned above, the writ petitions are allowed to the extent ordered, however, we are not inclined to order

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interest. No costs. The respondents are directed to settle the pensionary benefits to the petitioners within two months from today. Connected WPMPs are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Management of Indian Bank
   rep. by its Chairman and
   Managing Director
   Indian Bank, Central Office
   Rajaji Salai
   Chennai - 600 001

2. The Assistant General Manager
   Personnel Department
   Indian Bank, Central Office
   Rajaji Salai
   Chennai - 600 001

+1cc to Mr.N.S. Rajan, Advocate, (Sr.38305)
+5cc to M/S.King & Partidge, (SR.38233)

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